No. 14823

In the United States Court of Appeals for the Ninth Circuit

CARPINTERIA LEMON ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR REVIEW AND REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon the petition of Carpinteria Lemon Association to review and set aside an order of the National Labor Relations Board (R. 74–76) [1] issued against petitioner on April 13, 1955, following the usual proceedings under Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), hereafter called the Act. In its answer (R. 87–92) the Board has requested enforcement of its order.

[1] References to portions of the printed record are designated "R." Wherever in a series of references a semicolon appears, references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

This Court has jurisdiction of the proceeding pursuant to Section 10 (e) and (f) of the Act, the unfair labor practice having occurred at petitioner's plant in Carpinteria, California, within this judicial circuit. The Board's decision and order are reported in 112 N. L. R. B. No. 20.

COUNTERSTATEMENT OF THE CASE

As more fully explained in the Board's brief (pp. 2–5) in No. 14840 on this Court's docket (*Santa Clara Lemon Association* v. *N. L. R. B.*), this case is one of five cases presently before the Court in which the Board found that the employers, a group of independent nonprofit cooperatives engaged in the processing and packing of citrus fruit in Southern California,[2] each violated the Act by refusing to bargain with the Union[3] which was the certified representative of their employees. Specifically, the Board based its unfair labor practice findings in this case on (1) petitioner's refusal to meet or deal further with the Union when, less than three months after certification of the Union by the Board, petitioner received a petition signed by a majority of its employees purporting to repudiate the Union as their bargaining representative, and (2) petitioner's subsequent conduct in increasing wages without negotiating with the Union. The evidentiary facts, in

[2] Petitioner, herein sometimes referred to as Carpinteria, operates a packing house in Carpinteria, California, from which it ships a substantial amount of citrus fruit into interstate commerce (R. 51: 101). No jurisdictional issue is presented.

[3] United Fresh Fruit and Vegetable Workers Union, L. I. U., No. 78, CIO, herein called the Union.

the main stipulated, upon which these findings are based may be summarized as follows:

I. The Board's findings of fact

On November 18, 1953, a majority of Carpinteria's employees, at a Board-conducted representation election held pursuant to a consent election agreement entered into by the parties, voted for the Union to represent them in collective bargaining (R. 52; 102–103). No objections were filed to the conduct of the election and the Union was certified as bargaining representative of the employees on November 27, 1953 (R. 52; 8–9, 103).

Thereafter, beginning on December 18, 1953, and lasting through February 9, 1954, a series of five meetings were held between Carpinteria and the Union for the purpose of negotiating a collective bargaining agreement (R. 54; 103). In the course of these meetings the Union submitted a proposed written contract, the provisions of which were discussed at length, and Carpinteria offered counterproposals with respect to some subjects (R. 54; 103–104). Although no final agreement was reached, and the parties had not discussed wages, nonetheless "considerable progress was made and tentative agreements were reached on numerous phases of the contracts" during the five negotiation sessions (*ibid.*). On February 11, however, two days after the fifth meeting, a document signed by a majority of the employees was served on Carpinteria stating that the employees "no longer wish to be represented by [the Union], and that we hereby cancel the right of said Local to represent us in any matter pertaining to our employment" (R. 55; 27).

The petition further requested that Carpinteria recognize and negotiate with a committee of three named employees as bargaining representative of the signataries thereto (R. 55; 30).

Shortly following receipt of the employee petition by Carpinteria, the latter's attorney informally advised Syd Rose, a Union field representative, that negotiations with the Union were being broken off (R. 56; 40). Rose, on February 24, wrote a letter to Carpinteria in which he requested that "negotiations be resumed at once," and further cautioned Carpinteria that "the Union's certification as sole collective bargaining agent is valid and enforceable" (R. 56; 40). Two days later Carpinteria replied, through its counsel, that in view of the employee petition purporting to repudiate the Union as their bargaining representative, "it may be an unlawful labor practice * * * to continue further bargaining with the Union" (R. 56; 41). Rose again wrote Carpinteria on March 11, 1954, and "request[ed] that negotiations be resumed at the earliest possible time" (R. 56: 42). However, no further meetings were held, and no agreement was ever reached (R. 56; 104).

Several weeks following Carpinteria's refusal to meet further with Union, Carpinteria put into effect a wage increase of 15–20 cents, without prior notification to or consultation with the Union (R. 62; 102).

II. The Board's conclusions and order

Upon the foregoing facts, the Board concluded that Carpinteria had violated Section 8 (a) (5) and (1) of the Act by breaking off contract negotiations

with the Union and by thereafter unilaterally granting a wage increase to its employees (R. 74, 67). To remedy the foregoing unfair labor practices, the Board's order requires Carpinteria to cease and desist from refusing to bargain collectively with the Union, under the name it adopted following affiliation in July 1954 with the Packinghouse Workers,[4] and from in any like manner interfering with its employees in the exercise of their statutory right to organize and bargain collectively (R. 74–75). Affirmatively, the Board's order requires Carpinteria, upon request, to bargain with the Union, under its present name, and to post appropriate notices (R. 75).

ARGUMENT

The Board's finding that petitioner violated Section 8 (a) (5) and (1) of the Act and its order requiring petitioner to bargain with the Union as now affiliated are valid and proper

Carpinteria apparently concedes the correctness of the Board's ruling that it violated Section 8 (a) (5) and (1) of the Act by refusing to bargain with the Union upon receipt of the petition by which a majority of the employees purported to revoke the authority of the Union to represent them. See *Ray Brooks* v. *N. L. R. B.*, 348 U. S. 96. Thus, Carpinteria makes only two contentions respecting the

[4] A full statement of the facts pertaining to the Union's affiliation with the Packinghouse Workers and the amendment to the Union's certification to reflect its affiliation is contained in the Board's brief (pp. 13–15) in No. 14840, to which the Court is respectfully referred. In directing Carpinteria to bargain with the Union as presently affiliated, the Board, in its decision in this case, relied on "the reasons set forth in [its decision in] *Santa Clara Lemon Association*" (No. 14840).

Board's findings and order: (1) that Carpinteria was warranted in granting a wage increase without notifying or consulting the Union because bargaining negotiations had been "suspended" during the period that the propriety of Carpinteria termination of negotiations was being adjudicated (Br. 6–8), and (2) that the Union's affiliation with the Packinghouse Workers resulted in the formation of a new and different union from that certified by the Board, and that the Board's order is therefore invalid insofar as it requires Carpinteria to bargain with the Union as now affiliated (Br. 5–6). These contentions are identical both in point of fact and law with those made by petitioner and fully discussed by the Board in its brief in Case No. 14840. Accordingly, rather than repeat the same discussion here, we respectfully refer the Court to the Board's brief in No. 14840 (pp. 25–38) for a statement of the reasons why we believe both contentions should be rejected.

CONCLUSION

The Board respectfully requests that its order be enforced in full.

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